

Donald G. Norris (SBN 90000)  
Douglas F. Galanter (SBN 93740)  
Norris & Galanter LLP  
523 W. Sixth St., Suite 716  
Los Angeles, CA 90014  
Tel: 213-232-0855  
Fax: 213-286-9499  
dnorris@norgallaw.com  
dgalanter@norgallaw.com

William F. Cavanaugh (SBN 133461)  
Scott B. Howard (admitted *pro hac vice*)  
William F. Schmedlin (admitted *pro hac vice*)  
Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 336-2000  
Fax: (212) 336-2222  
wcavanaugh@pbwt.com  
sbhoward@pbwt.com  
wschmedlin@pbwt.com

Attorneys for Defendants  
MEDICIS AESTHETICS, INC., MEDICIS PHARMACEUTICAL CORP.,  
VALEANT PHARMACEUTICALS NORTH AMERICA LLC,  
VALEANT PHARMACEUTICALS INTERNATIONAL,  
VALEANT PHARMACEUTICALS INTERNATIONAL, INC., and GALDERMA  
LABORATORIES, L.P.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ALLERGAN USA, INC., and  
ALLERGAN INDUSTRIE, SAS,

Plaintiffs,

v.

MEDICIS AESTHETICS, INC.,  
MEDICIS PHARMACEUTICAL  
CORP., VALEANT  
PHARMACEUTICALS NORTH  
AMERICA LLC, VALEANT  
PHARMACEUTICALS  
INTERNATIONAL, VALEANT  
PHARMACEUTICALS  
INTERNATIONAL, INC., AND  
GALDERMA LABORATORIES, L.P.

Defendants.

Case No. 8:13-cv-01436 AG (JPRx)

**DECLARATION OF WILLIAM F.  
CAVANAUGH IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
OF NO INVALIDITY FROM PRIOR  
USE**

Date: June 1, 2015 (proposed)

Time: 10:00am

Ctrm: 10D

Judge: Hon. Andrew J. Guilford

1 I, William F. Cavanaugh, declare as follows:

2 1. I am a member of the law firm Patterson Belknap Webb & Tyler  
3 LLP, attorneys for the Defendants in the above-captioned case. I am admitted to  
4 practice in the State of California.

5 2. Attached hereto as Exhibit A is a true and correct copy of “Dermal  
6 Fillers Approved by the Center for Devices and Radiological Health,” available at  
7 [http://www.fda.gov/medicaldevices/productsandmedicalprocedures/cosmeticdevices/](http://www.fda.gov/medicaldevices/productsandmedicalprocedures/cosmeticdevices/wrinklefillers/ucm227749.htm)  
8 [wrinklefillers/ucm227749.htm](http://www.fda.gov/medicaldevices/productsandmedicalprocedures/cosmeticdevices/wrinklefillers/ucm227749.htm).

9 3. Attached hereto as Exhibit B is a true and correct copy of  
10 “Recently Approved Devices: CosmoDerm™ 1 Human-Based Collagen,  
11 CosmoDerm™ 2 Human-Based Collagen and CosmoPlast™ Human-Based Collagen  
12 – P800022/S050,” available at  
13 <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApproval>  
14 [sandClearances/Recently-ApprovedDevices/ucm082635.htm](http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApproval).

15 4. On January 14, 2015, counsel for Defendants took the deposition  
16 under oath of Dr. Pierre Lebreton. Attached hereto as Exhibit C is a true and correct  
17 copy of excerpts of the official transcript of that deposition.

18 5. Attached hereto as Exhibit D is a true and correct copy of  
19 correspondence from the Department of Health & Human Services to Anika  
20 Therapeutics, Inc., dated December 20, 2006, available at  
21 [http://www.accessdata.fda.gov/cdrh\\_docs/pdf5/P050033a.pdf](http://www.accessdata.fda.gov/cdrh_docs/pdf5/P050033a.pdf).

22 6. Attached hereto as Exhibit E is a true and correct copy of the  
23 Premarket Approval for Prevelle Silk, available at  
24 <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpma/pma.cfm?id=25829>.

25 7. Attached hereto as Exhibit F is a true and correct copy of a  
26 meeting agenda bearing the Bates numbers AGNHA00217006-217005.

27 DECLARATION OF WILLIAM F. CAVANAUGH  
28 IN SUPPORT OF DEFENDANTS’ OPPOSITION TO  
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY  
JUDGMENT OF NO INVALIDITY FROM PRIOR USE

1           8.     Attached hereto as Exhibit G is a true and correct copy of a  
2 presentation dated November 6, 2008 bearing the Bates numbers AGNHA00453817-  
3 453835.

4           9.     Attached hereto as Exhibit H is a true and correct copy of email  
5 correspondence among Allergan employees dated January 14, 2009-January 15, 2009  
6 bearing the Bates numbers AGNHA00127427-127428.

7           10.    Attached hereto as Exhibit I is a true and correct copy of Busso, *et*  
8 *al.*, *Hand augmentation with Radiesse® (Calcium hydroxylapatite)*, bearing the Bates  
9 numbers AGNHA00298534-AGNHA00298536.

10          11.    Attached hereto as Exhibit J is a true and correct copy of Busso, *et*  
11 *al.*, *An Investigation of Changes in Physical Properties of Injectable Calcium*  
12 *Hydroxylapatite in a Carrier Gel When Mixed with Lidocaine and with*  
13 *Lidocaine/Epinephrine*, bearing the Bates numbers AGNHA00437451-437459.

14          12.    Attached hereto as Exhibit K is a true and correct copy of email  
15 correspondence among Dr. Pierre Lebreton and others dated August 7, 2009 bearing  
16 the Bates numbers AGNHA0043744-43745.

17          13.    Attached hereto as Exhibit L is a true and correct copy of excerpts  
18 of the expert report of Dr. Mary Lupo dated February 9, 2015.

19          14.    Attached hereto as Exhibit M is a true and correct copy of excerpts  
20 of the expert report of Vincent A. Thomas, dated February 17, 2015.

21          15.    On April 17, 2015, counsel for Defendants took the deposition  
22 under oath of Dr. Mary Lupo. Attached hereto as Exhibit N is a true and correct copy  
23 of excerpts of the rough transcript of that deposition.

24          16.    Attached hereto as Exhibit O is a true and correct copy of a Q-Med  
25 lab report bearing the Bates numbers QMED0005824-5831.

17. Attached hereto as Exhibit P is a true and correct copy of excerpts of the expert report of Dr. Glenn D. Prestwich, Ph.D dated February 17, 2015.

18. Attached hereto as Exhibit Q is a true and correct copy of Beasley, *et al.*, *Hyaluronic Acid Fillers: A Comprehensive Review*, Facial Past Surg 2009;25(2)86-94.

19. Attached hereto as Exhibit R is a true and correct copy of Plaintiffs' Responses and Objections to Defendants' First Set of Requests for Admission to Plaintiffs Allergan USA, Inc. and Allergan Industrie, SAS (Numbers 1-11), dated February 17, 2015.

20. Attached hereto as Exhibit S is a true and correct copy of excerpts of the Rebuttal Report of Dr. Mark S. Nestor, M.D., Ph.D, dated March 23, 2015.

21. Attached hereto as Exhibit T is a true and correct copy of the Affidavit of Julie Ann Santos, dated April 20, 2015.

22. Attached hereto as Exhibit U is a true and correct copy of Defendants' Final Invalidity Contentions, and accompanying charts, dated February 18, 2015.

23. On April 7, Counsel for Plaintiffs took the deposition under oath of Per Lango. Attached hereto as Exhibit V is a true and correct copy of excerpts of the rough transcript of that deposition.

I declare, under penalty of perjury, that the foregoing statements are true and correct.

Dated: April 20, 2015

/s/ William F. Cavanaugh  
 William F. Cavanaugh  
 PATTERSON BELKNAP WEBB & TYLER LLP  
 1133 Avenue of the Americas  
 New York, New York 10282  
 wfcavanaugh@pbwt.com  
 Phone: (212) 336-2000  
 Fax: (212) 336-2222

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 20, 2015 to all counsel of record by electronic mail.

/s/ William F. Cavanaugh  
William F. Cavanaugh